

Service Date: June 29, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application	)	UTILITY DIVISION
of MOUNTAIN WATER COMPANY for	)	
Authority to Increase Rates and	)	DOCKET NO. 89.6.23
Charges for Water Service in the	)	
Missoula, Montana Service Area.	)	ORDER NO. 5449b

ORDER ON MOTION FOR RECONSIDERATION

BACKGROUND

On April 5, 1990 the Montana Public Service Commission (Commission) issued Order No. 5449a disposing of all matters then pending in this Docket. On May 8, 1990, the Applicant, Mountain Water Company (MWC) filed a Motion for Reconsideration on the issue of the Commission's treatment of prior period expenses incurred in the discharge of its obligations under Section 69-4-511, MCA (designated "SB 28" hereafter, and in Final Order No. 5449a).

At a June 8, 1990, work session scheduled at the regularly held agenda on June 4, 1990, the Commission considered the issue and found no reason to modify its Order No. 5449a except to the extent of making technical corrections and clarifying certain of the Findings of Fact.

On page 2 of its motion MWC states that the Commission's Finding of Fact Nos. 28 and 29 seem to indicate that MWC is responsible for the actual maintenance and repair of its customer

service lines. The Commission agrees that those findings can be construed as placing an actual maintenance and repair responsibility on MWC for service lines. SB 28 does not impose the actual repair and maintenance responsibility on MWC; it imposes only a financial obligation for service line repairs occurring between the company's water main and the customer's property line.

Finding of Fact Nos. 28 and 29 should read as follows:

The Montana Legislature passed Senate Bill No. 28 during its 1987 legislative session. SB 28 is codified as 69-4-511, MCA. For purposes of discussion in this order the term SB 28 will be used. SB 28 changed the responsibility for the cost of maintenance and repair of water service lines. Prior to October 1, 1987, the effective date of SB 28, the responsibility for the cost of repair and maintenance of the entire water service line from the water main to the premises of the consumer was the consumer's obligation. On October 1, 1987 it became the responsibility of the private water service provider to pay for a portion of the maintenance and repair of the water service line from the company's water main to the consumer's property line.

In testimony both MCC and MWC acknowledged that MWC had incurred expenses as a result of the legislated change in responsibility for the cost of service line repair and maintenance. MCC and MWC disagree over the ratemaking treatment that should be afforded costs incurred in complying with SB 28 during the period 1/1/88 through 6/30/89.

At pages 2 and 3 of its motion the Applicant requests a technical correction regarding the amount of SB 28 expense recovery under consideration in this Docket. In Order No. 5449a the Commission indicated that the Applicant is requesting recovery of costs totalling \$111,533 in costs incurred during the period January 1, 1988 through June 30, 1989, for compliance with SB 28.

Since a two year amortization of this cost was proposed by the Applicant the Commission further indicated that it was considering \$55,766 as a component of the current cost of service.

At the public hearing the Applicant requested that it be allowed to update costs associated with its compliance with SB 28.

See TR pp. 40-41. The Applicant requested that it be allowed to recover costs totalling \$165,108 incurred during the period January 1, 1988 through December 31, 1989. Amortizing this cost over a two year period, as proposed by the Applicant, would result in \$82,544 being a component of the current cost of service.

No objections were made to the Applicant's proposal to update costs incurred in complying with the requirements of SB 28.

Therefore the Commission, in order No. 5449a, should have used the revised costs and hereby makes the technical correction requested by the Applicant to amend Order No. 5449a to incorporate the corrected costs.

At pages 3 and 4 of its Motion for Reconsideration the Applicant represents that Commission rule ARM 38.5.106 precluded MWC from filing a rate application incorporating SB 28 compliance costs, as a component of its cost of service, at any time earlier than the date of filing in this docket. MWC further represents that historic cost data regarding SB 28 compliance costs was the only satisfactory method of supporting SB 28 expenses as a component of its cost of service, given the requirements of ARM 38.5.106. MWC's representations of the requirements imposed on a

utility by this rule is incorrect and is inconsistent with the Commission's interpretation and application of this rule.

ARM 38.5.106 provides a three part test for proforma adjustments to be accepted as a component of a utility's overall cost of operation. The three parts of the test that must be satisfied are 1) the adjustment must be based on changes in costs that are known with certainty, 2) the adjustment must be based on changes in costs which are measurable with reasonable accuracy at the time of filing, and 3) the expense must become effective within 12 months of the close of a historic test year. SB 28 compliance costs could have been presented by the Applicant as a proforma adjustment to a test year and met all three parts of this test using a 1986 test year and not a 1988 test year as represented by the Applicant in its motion.

The Commission refers the Applicant to Butte Water Company, Commission Docket No. 87.6.30, Order No. 5331. In the Butte Water docket the Commission was presented with a proposal, that was approved, to incorporate SB 28 compliance costs as a proforma adjustment to the company's overall cost of service. In that proceeding Butte Water utilized a 1986 test year and made a satisfactory showing to the Commission that the SB 28 proforma adjustment represented a known and measurable change occurring within 12 months of the close of the test year.

On page 4 of its motion the Applicant states:

The Commission seems to suggest in its Finding of Fact 43 that Mountain Water has recovered the costs incurred in 1988 and 1989 in

complying with SB 28. The Commission has no basis for making such a suggestion. It cannot seriously contend that the rates in effect during 1988 and 1989 were based upon a cost of service which included Mountain Water's cost of complying with SB 28. The rates in effect during those two years were established in PSC Docket No. 86.9.51 and were based upon a cost of service derived from an historic year ended December 31, 1985. Both the test year and the cost of service derived from that test year predate the effective date of SB 28 by almost two years.... The Commission's final order in this docket has determined that the rates Mountain Water was permitted to charge its customers in 1988 failed to recover its cost of service as established by this Commission by \$414,727. Part of the shortfall was because of the costs incurred by Mountain Water in complying with the provisions of SB 28.

The Commission does not suggest, it states, in Finding of Fact No. 43, that MWC recovered its 1988 and 1989 SB 28 compliance costs. Mr. Magone stated that MWC recovered all of its costs of doing business during the test year and also earned a return on its investment. This means that the SB 28 compliance costs were recovered because SB 28 costs were one of MWC's costs of doing business during the test year.

In the passage quoted above, MWC mischaracterizes the ratemaking process by asserting that it was impossible for MWC to have recovered SB 28 costs because the Commission had not specifically considered those costs as part of the MWC cost of service in a previous docket. MWC portrays the ratemaking process as a mechanism that isolates individual financial items, in this case SB 28 expenses, as the source of an earnings shortfall. Individual adjustments to financial statements are examined

separately in the ratemaking process but it is not those adjustments standing alone that determine the need for rate relief.

The ratemaking process examines the financial statements of a filing utility in their totality. Without considering all financial information impacting the revenue requirement of the utility no determination of a need for rate relief can be rendered.

The Motion for Reconsideration, at page 8, discusses the possibility that SB 28 expenses may be capital in nature rather than operating. On page 8 the Applicant suggests that if the Commission is of the opinion that SB 28 expenses are capital in nature then the Commission in its order on reconsideration should direct the Applicant to capitalize the costs and apply ordinary depreciation rates to the amounts capitalized. Nowhere on the record in this Docket is there testimony or exhibits indicating that SB 28 costs are capital in nature. If the Applicant wishes the Commission to consider treating the prior period SB 28 costs as capital costs then it will have to make a request that the docket be reopened for the taking of additional testimony on this issue. The Applicant is cautioned, however, that if the Docket is reopened for the taking of additional evidence on the capital nature of the prior period SB 28 expenses, treatment afforded current and prospective SB 28 expenses would have to be considered also.

Beginning on page 5 of its Motion for Reconsideration MWC asserts that the Commission, based on representations it made to the United States District Court in the course of defending SB 28

from a constitutional challenge, is bound to approve MWC's proposal for the ratemaking treatment of prior period SB 28 expenses. The Commission has already responded to this assertion in Final Order No. 5449a, and simply repeats that MWC, once again, distorts the Commission's argument to the District Court and mischaracterizes the basis for the Court's decision. The Commission finds that its decision in this case is entirely consistent with its position in all phases of the SB 28 litigation.

On page 9 of its Motion for Reconsideration MWC argues that the Commission's decision on SB 28 expenses in Final Order No. 5449a constitutes an unconstitutional taking of the private property of MWC. The Commission finds that this argument indicates a misunderstanding on the part of MWC about the nature of public utility ratemaking. The rates approved as a result of Final Order No. 5449a will allow MWC the opportunity to earn a reasonable return on its investment in utility service. Therefore, Final Order No. 5449a does not constitute an unconstitutional taking of MWC's property.

#### CONCLUSIONS OF LAW

1. The Applicant, Mountain Water Company, is a public utility as defined in Section 69-3-101, MCA. The Montana Public Service Commission properly exercises jurisdiction over Applicant's rates and service pursuant to Section 69-3-102, MCA.

2. The Commission has provided adequate public notice and an opportunity to be heard as required by Section 69-3-303, MCA, and Title 2, Chapter 4, MCA.

3. The rates and rate structure approved in this order are just and reasonable. Sections 69-3-201 and 69-3-330, MCA.

ORDER

With respect to the modifications to Order No. 5449a described and discussed at paragraphs 3-6 of this Order, Mountain Water Company's Motion for Reconsideration is Granted. In all other respects Mountain Water Company's Motion for Reconsideration of Order No. 5449a is Denied.

Done and Dated this 26th day of June, 1990 by a vote of 3-0.



BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Vice Chairman

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WALLACE W. "WALLY" MERCER, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE:      You may be entitled to judicial review in this matter.  
              Judicial review may be obtained by filing a petition for  
              review within thirty (30) days of the service of this  
              order.    Section 2-4-702, MCA.